



February 14, 2018

Via FOIAOnline

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: Freedom of Information Act Request and Request for Expedited Processing

To Whom It May Concern:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, The Protect Democracy Project hereby requests that your office produce within 20 business days the following records (see below for clarity on the types of records sought):

1. All records, including but not limited to emails and memoranda, reflecting or related to any proposals—including legislative proposals—to change any policies, practices, rules, standards, regulations, or laws governing the removal of, reassignment of, or other adverse actions taken with respect to federal employees.
2. All records, including but not limited to emails and memoranda, reflecting or related to communications between the Environmental Protection Agency (EPA) and other agencies, between EPA and Congress, and/or between EPA and the Executive Office of the President regarding any proposals—including legislative proposals—to change any policies, practices, rules, standards, regulations, or laws governing the removal of, reassignment of, or other adverse actions taken with respect to federal employees.
3. In addition to the records requested above, we also request records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched, and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

The timeframe for this request is January 1, 2018 through the date that searches are conducted for records responsive to this FOIA request.

We ask that you search for records from all components of EPA that may be reasonably likely to produce responsive results.

EXPEDITED PROCESSING REQUEST

We request that you expedite the processing of this request pursuant to 5 U.S.C. § 552(a)(6)(E) and 40 C.F.R. § 2.104(e). This request meets the criteria for expedited processing because there is an “urgency to inform the public concerning actual or alleged Federal Government activity” and the request is “made by a person primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

In his State of the Union speech on January 30, 2018, President Trump stated: “I call on the Congress to empower every Cabinet secretary with the authority to reward good workers—and to remove federal employees who undermine the public trust or fail the American people.”¹ There is legislation currently pending in the House that would make new federal employees “at will” and would allow them to be fired “for no cause at all.”² And the President’s recently released budget proposes changes to the civil service system.³ Thus, there is every reason to believe that a debate on this topic in Congress and among the public at large, and possible legislative action, is imminent. We seek information that will be used to help inform this discussion. The public has an urgent right to this information, which is clearly related to the activity of the Federal Government.

Furthermore, The Protect Democracy Project intends to disseminate the information obtained in response to this request. As the District Court for the District of Columbia “easily” determined in recent litigation in a separate FOIA request, “Protect Democracy satisfied these standards” of being “primarily engaged in disseminating information.” *Protect Democracy Project, Inc. v. U.S. Dep’t of Def.*, 263 F. Supp. 3d 293, 298 (D.D.C. 2017). The Protect Democracy Project operates in the tradition of 501(c)(3) good government organizations that qualify under FOIA as “news media organizations.” Like those organizations, the purpose of The Protect Democracy Project is to “gather information of potential interest to a segment of the public, use its editorial skills to turn the raw materials into distinct work, and distribute that work to an audience.” *Nat’s Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Indeed, The Protect Democracy Project has routinely demonstrated the ability to

¹ Lydia Wheeler, *Trump: Congress should give agencies power to fire federal employees*, The Hill, Jan. 30, 2018, <http://thehill.com/homenews/administration/371532-trump-congress-should-give-agencies-power-to-fire-federal-employees>.

² See Joe Davidson, Hits on federal retirement advance as bill is introduced to fire feds for ‘no cause at all’, Wash. Post, July 21, 2017, https://www.washingtonpost.com/news/powerpost/wp/2017/07/21/hits-on-federal-retirement-advance-as-bill-is-introduced-to-fire-feds-for-no-cause-at-all/?utm_term=.f1fbb5958ba4.

³ See Eric Yoder, Budget provides no raise, targets retirement benefits for federal employees, Wash. Post, Feb. 12, 2018, https://www.washingtonpost.com/news/powerpost/wp/2018/02/12/budget-provides-no-raise-targets-retirement-benefits-for-federal-employees/?utm_term=.c6109f211dc2.

disseminate information about its FOIA requests to a wide audience.⁴ The Protect Democracy Project will disseminate information and analysis about this request – and any information obtained in response – through its website (protectdemocracy.org); its Twitter feed (<https://twitter.com/protectdemocracy>), which has almost 13,000 followers; its email list of approximately 20,000 people; and sharing information with other members of the press.

In sum, this request satisfies the requirements of 5 U.S.C. § 552(a)(6)(E) and 40 C.F.R. § 2.104(e). It is therefore incumbent upon the government and urgent for your office to share any responsive records in an expedited fashion.

Under penalty of perjury, I hereby affirm that the foregoing is true and correct to the best of my knowledge and belief.

FEE WAIVER

FOIA provides that any fees associated with a request are waived if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The core mission of The Protect Democracy Project, a new organization awaiting 501(c)(3) status, is to inform public understanding on operations and activities of the government. As explained in support of the request for expedited processing, this request is submitted in consort with the organization’s mission to gather and disseminate information that is likely to contribute significantly to the public understanding of executive branch operations and activities. The Protect Democracy Project has no commercial interests.

In addition to satisfying the requirements for a waiver of fees associated with the search and processing of records, The Protect Democracy Project is entitled to a waiver of all fees except “reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Federal law mandates that fees be limited to document duplication costs for any requester that qualifies as a representative of the news media. *Id.* As explained above, The Protect Democracy Project operates in the tradition of 501(c)(3) good government organizations that qualify under FOIA as “news media organizations.” Like those organizations, the purpose of The Protect Democracy Project is to “gather information of potential interest to a segment of the public, use its editorial skills to turn the raw materials into distinct work, and distribute that work to an audience.” *Nat’s Sec.*

⁴ See, e.g., Lisa Rein, *Watchdog group, citing “integrity of civil service,” sues Trump to find out if feds are being bullied*, Wash. Post, Apr. 27, 2017, https://www.washingtonpost.com/news/powerpost/wp/2017/04/27/watchdog-group-citing-integrity-of-civil-service-sues-trump-to-find-out-if-feds-are-being-bullied/?utm_term=.8647ab128f3e; Ben Berwick, *Going to Court for Civil Servants*, Take Care, April 28, 2017, <https://takecareblog.com/blog/going-to-court-for-civil-servants>; Charlie Savage, *Watchdog Group Sues Trump Administration, Seeking Legal Rationale Behind Syria Strike*, N.Y. Times, May 8, 2017, <https://nyti.ms/2pX82OV>; Justin Florence, *What’s the Legal Basis for the Syria Strikes? The Administration Must Acknowledge Limits on its Power to Start a War*, Lawfare, May 8, 2017, <https://www.lawfareblog.com/whats-legal-basis-syria-strikes-administration-must-acknowledge-limits-its-power-start-war>.

Archive v. Dep't of Defense, 880 F.2d 1381, 1387 (D.C. Cir. 1989). As the District Court for the District of Columbia “easily” determined in recent litigation in a separate FOIA request, The Protect Democracy Project is “primarily engaged in disseminating information.” *Protect Democracy Project*, 263 F. Supp. 3d at 298. Indeed, The Protect Democracy Project has routinely demonstrated the ability to disseminate information about its FOIA requests to a wide audience, including information on the topic of protecting the civil service. See *supra* note 3. The Protect Democracy Project will disseminate information and analysis about this request – and any information obtained in response – through its website (protectdemocracy.org); its Twitter feed (<https://twitter.com/protctdemocracy>), which has more than 10,000 followers; its email list of approximately 20,000 people; and sharing information with other members of the press.

RESPONSIVE RECORDS

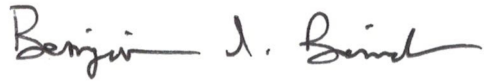
We ask that all types of records and all record systems be searched to discover records responsive to our request. We seek records in all media and formats. This includes, but is not limited to: agendas, manifests, calendars, schedules, notes, and any prepared documentation for meetings, calls, teleconferences, or other discussions responsive to our request; voicemails; e-mails; e-mail attachments; talking points; faxes; training documents and guides; tables of contents and contents of binders; documents pertaining to instruction and coordination of couriers; and any other materials. However, you need not produce press clippings and news articles that are unaccompanied by any commentary (e.g., an email forwarding a news article with no additional commentary in the email thread).

We ask that you search all systems of record, including electronic and paper, in use at your agency, as well as files or emails in the personal custody of your employees, such as personal email accounts, as required by FOIA and to the extent that they are reasonably likely to contain responsive records. The Protect Democracy Project would prefer records in electronic format, saved as PDF documents, and transmitted via email or CD-rom.

If you make a determination that any responsive record, or any segment within a record, is exempt from disclosure, we ask that you provide an index of those records at the time you transmit all other responsive records. In the index, please include a description of the record and the reason for exclusion with respect to each individual exempt record or exempt portion of a record, as provided by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). When you deem a portion of a record exempt, we ask that the remainder of the record to be provided, as required by 5 U.S.C. § 552(b).

Given the 20-day statutory deadline and our request for expedition, we hope to be as helpful as possible in clarifying or answering questions about our request. Please contact me at ben.berwick@protectdemocracy.org or (909) 326-2911 if you require any additional information. We appreciate your cooperation, and look forward to hearing from you very soon.

Sincerely,

A handwritten signature in black ink, appearing to read "Benjamin L. Berwick". The signature is fluid and cursive, with the first name "Benjamin" and last name "Berwick" clearly distinguishable.

Ben Berwick
Counsel
The Protect Democracy Project